

AUSLEY & McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

227 SOUTH CALHOUN STREET
P.O. BOX 391 (ZIP 32302)
TALLAHASSEE, FLORIDA 32301
(850) 224-9115 FAX (850) 222-7560

August 6, 2001

BY HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Determination of Regulated Earnings of Tampa Electric Company
Pursuant to Stipulations for Calendar Years 1995 through 1999;
Docket No. 950379-E1

Dear Ms. Bayo:

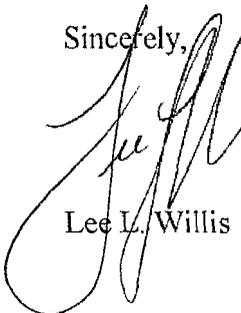
Enclosed for filing in the above referenced are the original and fifteen (15) copies of Tampa Electric Company's Prehearing Statement.

Also enclosed is a diskette containing the above document generated in Word and saved in Rich Text format for use with WordPerfect.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,



Lee L. Willis

LLW/bjd
Enclosures

cc: All Parties of Record (w/encl.)

DOCUMENT NUMBER-DATE

09526 AUG-6 01

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Determination of regulated earnings of)
Tampa Electric Company pursuant to stipulations)
for calendar years 1995 through 1999)
_____)

DOCKET NO. 950379-EI
FILED: August 6, 2001

**TAMPA ELECTRIC COMPANY'S
PREHEARING STATEMENT**

A. APPEARANCES

LEE L. WILLIS
JAMES D. BEASLEY and
KENNETH R. HART
Ausley & McMullen
Post Office Box 391
Tallahassee, Florida 32302
On behalf of Tampa Electric Company

B. WITNESSES:

<u>Witness</u>	<u>Subject Matter</u>	<u>Issues</u>
<u>Direct</u>		
Delaine M. Bacon	Policy	1, 2, 3
James W. Sharpe	Accounting	1
<u>Rebuttal</u>		
Delaine M. Bacon	Policy	1, 2, 3

C. EXHIBITS:

<u>Exhibit</u>	<u>Witness</u>	<u>Description</u>
DMB-1	Bacon	Exhibit of Delaine M. Bacon

D. STATEMENT OF BASIC POSITION

Tampa Electric Company's Statement of Basic Position:

The Commission should affirm its decision in Order No. 0113 which held that interest on tax deficiency expense was prudently incurred in 1999 and should be included in the calculation of the company's earnings for 1999 under the Stipulation.

The central issues here are the proper interpretation of the Stipulation and the prudence of the Company's decisions. The Commission correctly concluded in Order No. 0113:

As we discussed previously in this order, we believe this interest is a prudent expense. Consistency, fairness, and the most reasonable interpretation of the stipulations leads us to find that it is appropriate to include the interest expense associated with the tax deficiencies in the calculation of Tampa Electric's 1999 actual ROE. (Order No. 0113, at pages 18-19).

This Commission properly considered the context of the whole agreement, the purposes sought to be effectuated and its prior decisions in this docket. Upon that review, the Commission found in Order 0113 that prudently incurred interest on tax deficiency expense must be considered in the calculation of 1999 earnings. The Commission interpreted the agreement in a fair and even-handed manner by giving full effect to all the provisions of the agreement, which provided each party the rights and benefits it bargained for in the agreement.

Order No. 0113 provides a fair and even-handed interpretation of paragraphs 7, 10 and 11 of the Stipulation by concluding "the fact that no adjustment was made in the last full revenue requirements proceeding does not preclude an adjustment in any year covered by the Stipulation. The relevant question is one of prudence." (Order No. 0113, pg. 18.) The Company's decisions reduced revenue requirements and were clearly prudent. The company's cost-benefit analysis was prepared consistently with those used by the Commission in other proceedings and showed benefits to ratepayers as a result of the company's tax positions that led to the incurrence of

interest on tax deficiencies. Benefits to ratepayers accrued because of the deferral of taxes that are due to the IRS. Deferring the taxes avoided the higher cost of capital that would have existed if the tax had been paid sooner.

OPC's challenge to the Commission's ruling is inconsistent with prior positions taken by OPC supporting adjustments detrimental to the company that were not made in the last rate case. Consequently, OPC is equitably estopped from taking an inconsistent position with respect to interest on tax deficiency expense in this proceeding. Moreover, under paragraph 10 of the March 25, 1996 Stipulation, OPC is required to support a determination that any interest expense incurred as the result of a Polk Power Station related tax deficiency assessment will be considered a prudent expense for ratemaking purposes. Included in the amount of tax deficiency interest at issue in this proceeding is \$6.9 million of interest expense incurred in 1999 as the result of Polk Power Station related tax deficiency assessments. The appropriate way for OPC to comply with its obligation under the Stipulation is to withdraw its protest with respect to the Polk Power Station related amounts of income tax deficiency interest.

E. STATEMENT OF ISSUES AND POSITIONS

ISSUE 1: Is interest on tax deficiency expense incurred in 1999 a prudently incurred cost that should be allowed for recovery in the calculation of Tampa Electric's 1999 earnings?

TECO: Yes. The tax deficiency interest expense was a prudently incurred expense in 1999 associated with tax positions that have benefited customers. OPC is required by the Stipulation to support a significant portion of the tax deficiency interest as a prudently incurred expense. Paragraph 10 of the March 25, 1996 Stipulation provides:

The parties agree that any interest expense that might be incurred as the result of a Polk Power Station related tax deficiency

assessment will be considered a prudent expense for ratemaking purposes and will support this position in any proceeding before the FPSC.

\$6.9 million of the interest expense at issue in this proceeding was incurred in 1999 as a result of Polk Power Station tax deficiency assessments. The Stipulation forecloses the possibility of any challenge by OPC of the prudence of those costs.

ISSUE 2: Did the Commission in Order No. 0113 provide a reasonable interpretation of paragraphs 7, 10 and 11 of the Stipulation?

TECO: Most definitely. The Commission's Order No. 0113 at page 18 stated:

We believe the most reasonable interpretation of the provisions of paragraphs 7, 10 and 11 is as follows:

1. If an adjustment was made in the last full revenue requirements rate proceeding, the methodology employed in the full revenue requirements proceeding will control.
2. The fact that no adjustment was made in the last full revenue requirements rate proceeding does not preclude an adjustment in any year covered by the stipulation. The relevant question is one of prudence.
3. With respect to the potential interest on tax deficiencies associated with Polk Power Station addressed in paragraph 10, the stipulation forecloses the possibility of any challenge to the prudence of those costs. It was not meant to, has not been interpreted to, and should not be interpreted to, limit the possible prudent expenses to those categories either included in the last full revenue requirements proceeding or specifically enumerated in the stipulations.

This interpretation reached a fair balance consistent with prior decisions of this Commission in this docket and gave full meaning to each of the provisions of the Stipulation.

ISSUE 3: Is OPC equitably estopped from asserting inconsistent positions in this proceeding regarding adjustments not made in the last Tampa Electric rate case?

TECO: Yes. In this docket, OPC has either supported or failed to object to adjustments detrimental to the Company which were not made in the last rate case. These positions are fundamentally inconsistent with OPC's position with respect to interest on tax deficiency. Consequently, OPC is estopped by its course of conduct from now urging an inconsistent position.

F. STIPULATED ISSUES

TECO: None at this time.

G. MOTIONS

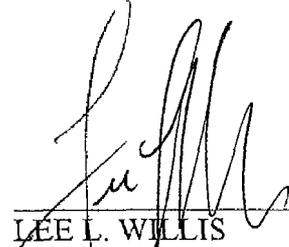
TECO: None pending.

H. OTHER MATTERS

TECO: None at this time.

DATED this 6th day of August, 2001.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "L. Willis", is written over a horizontal line.

LEE L. WILLIS
JAMES D. BEASLEY and
KENNETH R. HART
Ausley & McMullen
Post Office Box 391
Tallahassee, FL 32302
(850) 224-9115

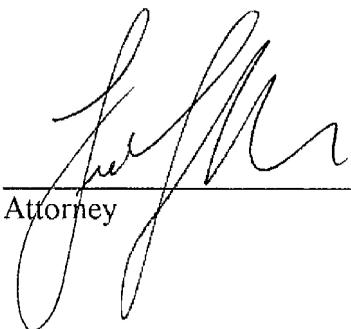
ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Prehearing Statement, filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail or hand delivery (*) on this 6th day of August 2001 to the following:

Mr. Robert V. Elias*
Staff Counsel
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

John Roger Howe
Deputy Public Counsel
Office of Public Counsel
111 West Madison Street, Rm. 812
Tallahassee, FL 32399



Attorney